IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 62 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHREENATHJI ENTERPRISES

Versus

RUPANGI IMPEX LTD.

Appearance:

1. COMPANY PETITION No. 62 of 2003

MR VIMAL M PATEL for Petitioner No. 1

MR ANSHIN H DESAI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 10/02/2005

ORAL JUDGEMENT

The petitioner has filed this petition under Sec. 433 read with Sec. 434 of the Companies Act, 1956 for winding up of the respondent-company.

2. It is the case of the petitioner that the respondent-company is indebted to the petitioner for an amount of Rs. 17,65,192/- with further interest thereon at the rate of 24% p.a. from the due date of payment till realization against the various bills raised by the petitioner for supply of Menthol or Menthol Oil. Since the company has failed to pay the petitioner's due, the petitioner called upon the company to pay the said dues.

3. It is further stated in the petition that the respondent was placing orders for purchase of Menthol or Mentha Oil on the petitioner. On the order being placed, the petitioner supplied Menthol or Mentha oil to the respondent. The respondent has taken delivery of the said goods from the petitioner. The petitioner has raised total bills of Rs. 85,49,181/-, as against which the respondent company could make the payment of Rs. 40,08,501/- and the balance amount remained outstanding. The petitioner has also issued letter dated 30.11.2002 requesting the respondent-company to clear the dues of Rs.35,27,992/- failing which the legal action will be taken. Instead of clearing the dues, the respondent company gave demand draft dated 30.12.2002 and 1.1.2003 for a sum of Rs. 4,50,000/ and Rs. 13,12,800/- only alleging that the payment was towards full and final payment of the entire outstanding dues. The petitioner has disputed the contents of the said letter as no settlement was arrived at between the parties. It was further stated that the petitioner has agreed that the amount of Rs. 17,62,800/- covers the entire outstanding dues.

4. The petitioner's advocate has thereafter given statutory notice dated 1.2.2003 calling upon the respondent-company to pay outstanding dues of Rs. 17,65,192/-. The said notice was duly served on the respondent-company. In response to the said statutory notice dated 1.2.2003, the respondent-company has stated that the company was facing highly liquidity crunch and it was very impossible to clear the entire dues of Rs. 17,65,192/-.

5. Since the respondent-company could not pay the amount due and payable to the petitioner, the present petition was filed before this court on 13.3.2003.

6. This court has issued notice on 17.3.2003. Though the notice was duly served, nobody appeared on behalf of the respondent-company and hence, the petition was admitted on 7.4.2003. However, the order of

advertisement was deferred up to 30.4.2003. On 30.4.2003, Mr. A.H. Desai, learned advocate for respondent-company appeared and the court has recorded on the basis of the statement which was not controverted by the respondent-company to the effect that the company's application before the BIFR was rejected in the month of March, 2003. The Court has therefore, taken a view that there was no surviving reason for which advertising the order of admission could be withheld. Accordingly, the court has passed the order of advertisement and also the order of appointment of Provisional Liquidator on 30.04.2003. Pursuant to the said order, advertisement appeared in the news papers namely "Sandesh" Gujarati daily, Ahmedabad edition and "The Indian Express" English daily, Ahmedabad edition. The affidavit of advertisement to that effect was also filed before this court on 1.9.2003.

7. Pursuant to the said advertisement issued by the petitioner-company, no one has objected to the winding up of the respondent-company. Since the respondent-company is unable to discharge its liability, the court is of the view that the respondent-company is financially weak and is not in a position to survive. Even otherwise, the Official Liquidator has taken over the charge of the respondent-company and all the assets are at present in the custody of the Official Liquidator. Mr. Vimal M. Patel learned advocate for the petitioner submitted that formal winding up order is required to be passed and O.L. has taken over the charge of all the assets of the respondent-company and the assets are required to be sold and out of the sale proceeds of the said assets, dues of the creditors are to be satisfied. Till date, the order is not passed, therefore, further steps in the direction of winding up of the company are required to be taken. Mr. Desai learned advocate for the respondent-company could not oppose the prayer made by the ld. advocate for the petitioner for winding up as looking to the respondent-company's position, the dues of the creditors are not satisfied and there is no possibility of making payment of outstanding dues of the petitioner and of revival of the company.

8. Mr. Patel has further submitted that the respondent Company is heavily indebted to the Banks and other institutions. He has further submitted that the substratum of the Company is lost and is not in a position to pay the outstanding dues. Mr. Patel has further submitted that amount due is admitted and yet no payment was made. He has, therefore, submitted that it is just, proper and expedient that the Company may be

ordered to be wound up and the Official Liquidator may be appointed as the Liquidator of the Company, with all the powers under the Provisions of the Companies Act, or under the supervision and control of this Court.

9. Considering the facts and circumstances of the case and looking to the financial position of the respondent-company, the court is of the view that there is no valid defence available with the respondent and the respondent-company is required to be wound up and accordingly, order of winding up of respondent-company is hereby passed. Since the Official Liquidator is also in possession of all the assets of the respondent - company, no order for taking possession is required to be passed. The O.L. will now act as the Liquidator of the respondent -company instead of Provisional Liquidator. The O.L. Shall exercise all the powers of the O.L. conferred upon him under the Act.

10. This petition is accordingly allowed.

[K.A. PUJ, J.]

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